

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

CENTRAL LABORERS' PENSION FUND  
BOARD OF TRUSTEES,  
CENTRAL LABORERS' WELFARE FUND  
BOARD OF TRUSTEES,  
CENTRAL LABORERS' ANNUITY FUND  
BOARD OF TRUSTEES, and  
BARRY McANARNEY,

Plaintiffs,

v.

MIKE FASULA CONCRETE CONSTRUCTION, INC.,  
an Illinois corporation, and  
MICHAEL J. FASULA, individually

Defendants.

**07 C 6144**

Honorable Suzanne B. Conlon

**PLAINTIFFS' MOTION  
FOR DEFAULT ORDER AND JUDGMENT ORDER**

Plaintiffs CENTRAL LABORERS' PENSION FUND BOARD OF TRUSTEES, CENTRAL LABORERS' WELFARE FUND BOARD OF TRUSTEES, CENTRAL LABORERS' ANNUITY FUND BOARD OF TRUSTEES, and BARRY McANARNEY, by their attorneys Daley and George, Ltd., respectfully move this Court to enter a default order and default judgment in favor of Plaintiffs and against Defendants MIKE FASULA CONCRETE CONSTRUCTION, INC. and MICHAEL J. FASULA, and in support of their motion Plaintiffs state as follows:

1. Plaintiffs filed their complaint in this action on October 31, 2007. (Docket Entry # 1.) The complaint alleged an amount due of not less than \$53,333.66.
2. On November 13, 2007, Defendant MIKE FASULA CONCRETE CONSTRUCTION, INC. was served with alias summons and a copy of the amended complaint. On December 4, 2007,

Plaintiffs caused the returned summons to be filed with the Clerk of this Court (Docket Entry # 10); a copy of the return of service is attached as Exhibit A.

3. On November 13, 2007, Defendant MICHAEL J. FASULA was served with alias summons and a copy of the amended complaint. On December 4, 2007, Plaintiffs caused the returned summons to be filed with the Clerk of this Court (Docket Entry # 11); a copy of the return of service is attached as Exhibit B.

4. Defendants MIKE FASULA CONCRETE CONSTRUCTION, INC. and MICHAEL J. FASULA have each failed to file an appearance, answer, or otherwise defend as to the complaint.

5. Defendant MICHAEL J. FASULA is not in military service, pursuant to the attached Exhibit C.

6. Defendant MICHAEL J. FASULA is not a minor or incompetent person.

7. On December 4, 2007, this Court found the defendants to be in default. (Docket Entry #12). A copy of the order is attached as Exhibit D.

8. Plaintiffs are entitled to a money judgment against Defendants MIKE FASULA CONCRETE CONSTRUCTION, INC. and MICHAEL J. FASULA in an amount not less than \$53,333.66 for delinquent fringe benefit contributions, audit costs, and late payment assessments for delinquent fringe benefit contributions. In support of this money judgment, Plaintiffs attach the Affidavit of Dan Koeppel as Exhibit E.

9. Pursuant 29 U.S.C. 1132 (g)(2)(D), Plaintiffs are entitled to the award of reasonable attorneys' fees and costs incurred in the prosecution of this proceeding. In support of an additional money judgment in the amount of \$972.00 for attorneys' fees and costs to date, Plaintiffs attach the Affidavit of Richard A. Toth as Exhibit F.

WHEREFORE, Plaintiffs respectfully pray this Court enter a default order and judgment in favor of Plaintiffs and against Defendants MIKE FASULA CONCRETE CONSTRUCTION, INC. and MICHAEL J. FASULA.

Respectfully submitted,

CENTRAL LABORERS' PENSION FUND BOARD OF  
TRUSTEES, CENTRAL LABORERS' WELFARE FUND  
BOARD OF TRUSTEES, CENTRAL LABORERS' ANNUITY  
FUND BOARD OF TRUSTEES, and BARRY McANARNEY

By:   
One of Their Attorneys

DALEY AND GEORGE, LTD.  
20 S. Clark St., Suite 400  
Chicago, Illinois 60603  
(312) 726-8797

67-2010-001

AO 440 (Rev. 05/00) Summons in a Civil Action

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS

SUMMONS IN A CIVIL CASE

CENTRAL LABORERS' PENSION FUND BOARD OF TRUSTEES,  
CENTRAL LABORERS' WELFARE FUND BOARD OF TRUSTEES,  
CENTRAL LABORERS' ANNUITY FUND BOARD OF TRUSTEES, and  
BARRY McANARNEY

V.

MIKE FASULA CONCRETE  
CONSTRUCTION, INC. and  
MICHAEL J. FASULA

07CV6144  
JUDGE CONLON  
MAG. JUDGE VALDEZ

MAGISTRATE JUDGE:

TO: (Name and address of Defendant)

MIKE FASULA CONCRETE CONSTRUCTION, INC.  
c/o Michael J. Fasula, President  
3196 Alyce Dr.  
Rockton, IL 61072 *US*  
or  
7832 Burden Rd.  
Machesney Park, IL 61115

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Richard A. Toth  
DALEY AND GEORGE LLP  
20 S. Clark St., Suite 400  
Chicago, IL 60603

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

MICHAEL W. DOBBINS, CLERK

*[Signature]*  
(By) DEPUTY CLERK

OCT 31 2007

DATE

EXHIBIT

A

Blumberg No. 5208

AO 440 (Rev. 05/00) Summons in a Civil Action

RETURN OF SERVICE	
Service of the Summons and complaint was made by me <sup>(1)</sup>	DATE
NAME OF SERVER (PRINT)	TITLE
Check one box below to indicate appropriate method of service	
<input type="checkbox"/> G Served personally upon the defendant. Place where served: _____	
<input type="checkbox"/> G Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left: _____	
<input type="checkbox"/> G Returned unexecuted: _____	
<input type="checkbox"/> G Other (specify): _____	

STATE OF ILLINOIS        }  
County of Winnebago    }       ss.

I have served the within writ on the within named N/A  
(corporation)

MIKE FARULA CONCRETE CONSTRUCTION INC. a corporation, by delivering a copy thereof to

MICHAEL J. FARULA (Name) OWNER - PRESIDENT (Title)

of said corporation M (sex) W (race) 45 (age) at 7832 BURGESS ROAD (address)

11-16-07 (date) 0950 (time) A.M. P.M.

Richard A. May SHERIFF  
By D. Cantrell DEPUTY

L/P - 07 12/96

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

AO 440 (Rev. 05/00) Summons in a Civil Action

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS

SUMMONS IN A CIVIL CASE

CENTRAL LABORERS' PENSION FUND BOARD OF TRUSTEES,  
CENTRAL LABORERS' WELFARE FUND BOARD OF TRUSTEES,  
CENTRAL LABORERS' ANNUITY FUND BOARD OF TRUSTEES, and  
BARRY McANARNEY

V.

MIKE FASULA CONCRETE  
CONSTRUCTION, INC. and  
MICHAEL J. FASULA

07CV6144  
JUDGE CONLON  
MAG. JUDGE VALDEZ

MAGISTRATE JUDGE:

TO: (Name and address of Defendant)

MICHAEL J. FASULA, individually  
3196 Alyce Dr.  
Rockton, IL 61072  
or  
7832 Burden Rd.  
Machesney Park, IL 61115

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Richard A. Toth  
DALEY AND GEORGE LLP  
20 S. Clark St., Suite 400  
Chicago, IL 60603

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

MICHAEL W. DOBBINS, CLERK

By [Signature]  
DEPUTY CLERK

OCT 31 2007  
DATE

Blumberg No. 5208

EXHIBIT

B

AO 440 (Rev. 05/00) Summons in a Civil Action

RETURN OF SERVICE	
Service of the Summons and complaint was made by me <sup>(1)</sup>	DATE
NAME OF SERVER (PRINT)	TITLE
Check one box below to indicate appropriate method of service	
<input type="checkbox"/> G Served personally upon the defendant. Place where served: _____	
<input type="checkbox"/> G Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left: _____	
<input type="checkbox"/> G Returned unexecuted: _____	
<input type="checkbox"/> G Other (specify): _____	
STATEMENT OF SERVICE FEES	
TRAVEL	SERVICES 18.50
TOTAL 18.50	

STATE OF ILLINOIS }  
County of Winnebago } ss.

I have duly served the within upon the within named MICHAEL J. FARULT  
M W 45 by leaving a true copy thereof with Him personally  
(sex) (race) (age)  
at 17832 AURORA RD. 7MP.  
11-13-07 0750 A.M.  
(date) (time) P.M.

RICHARD A. MORGAN, SHERIFF  
By D. C. [Signature], DEPUTY

L/P - 06 12/96

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

CENTRAL LABORERS' PENSION FUND  
BOARD OF TRUSTEES, *et al.*

Plaintiffs,

v.

MIKE FASULA CONCRETE CONSTRUCTION, INC.,  
an Illinois corporation, and  
MICHAEL J. FASULA, individually

Defendants.

07 C 6144

Honorable Suzanne B. Conlon

**AFFIDAVIT REGARDING MILITARY SERVICE**

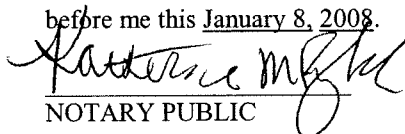
I, Richard A. Toth, affiant, duly sworn on oath, depose and say as follows:

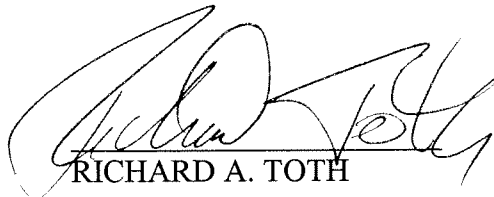
1. I am an attorney at the law firm of Daley and George, Ltd., 20 S. Clark, Chicago, Illinois 60603, Plaintiff's attorney of record in this action. This affidavit is being made pursuant to the provisions of Section 200 of the Soldiers and Sailors Civil Relief Act of 1940, as amended.

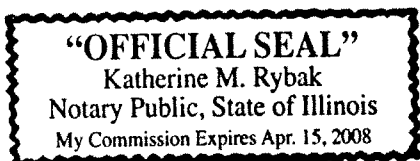
2. I have caused an investigation to be made to ascertain whether MICHAEL J. FASULA is in the military service of the U.S. Army, U.S. Navy, U.S. Marine Corps, U.S. Air Force, U.S. Coast Guard, or an officer of the Public Health Service, and as a result of that investigation I state that MICHAEL J. FASULA is not in any of the above-named branches of the military service, based in part on the following:

- a. Based on Illinois Secretary of State records, signed collective bargaining agreements, information obtained by audit, employer reports filed with the Central Laborers' Funds and other records of the Funds, and affiliated local union's records and dealings with MICHAEL J. FASULA, MICHAEL J. FASULA is currently and actively the president of MIKE FASULA CONCRETE CONSTRUCTION, INC., in MacHesney Park, Illinois.
- b. November 13, 2007, MICHAEL J. FASULA was served with process at his place of business in MacHesney Park, Illinois by Sheriff's deputies.
- c. Based on phone listings, MICHAEL J. FASULA maintains a residence in Rockton, Illinois.
- d. To the best of Plaintiffs' knowledge, MICHAEL J. FASULA is not in the military service.

Subscribed and sworn to  
before me this January 8, 2008.

  
NOTARY PUBLIC

  
RICHARD A. TOTH





## United States District Court, Northern District of Illinois

MHN

Name of Assigned Judge or Magistrate Judge	Suzanne B. Conlon	Sitting Judge If Other than Assigned Judge	
CASE NUMBER	07 C 6144	DATE	12/4/2007
CASE TITLE	CENTRAL LABORERS vs. MIKE FASULA CONCRETE		

## DOCKET ENTRY TEXT

Status hearing held and continued to January 9, 2008 at 9:00 a.m. Court finds defendant in technical default.

*Suzanne B. Conlon*

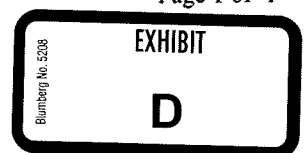
Docketing to mail notices.

00:05

Courtroom Deputy Initials:	TP
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07C6144 CENTRAL LABORERS vs. MIKE FASULA CONCRETE

Page 1 of 1



UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

CENTRAL LABORERS' PENSION FUND  
BOARD OF TRUSTEES, *et al.*

Plaintiffs,

v.

MIKE FASULA CONCRETE CONSTRUCTION, INC.,  
an Illinois corporation, and  
MICHAEL J. FASULA, individually

Defendants.

**07 C 6144**

Honorable Suzanne B. Conlon

**AFFIDAVIT OF DAN KOEPPPEL**

I, Dan Koepfel, affiant, being first duly sworn on oath, depose and say as follows:


1. I am presently the Director of the Delinquency Department of the CENTRAL LABORERS' PENSION, WELFARE AND ANNUITY FUNDS (the "Funds") and have held that position since 1987. By virtue of my authority in that position I have direct personal knowledge of all facts stated in this affidavit and if called as a witness could give testimony with respect thereto.

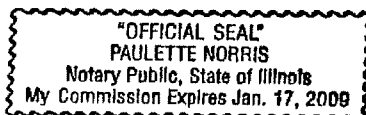
2. Defendants MIKE FASULA CONCRETE CONSTRUCTION, INC. and MICHAEL J. FASULA owe the Funds not less than \$53,333.66, consisting of delinquent fringe benefit contributions, audit costs, and late payment assessments for delinquent fringe benefit contributions. I have attached to my affidavit a schedule detailing all outstanding amounts due, marked Exhibit 1 and made a part hereof. The schedule accurately reflects the amounts owed by Defendants MIKE FASULA CONCRETE CONSTRUCTION, INC. and MICHAEL J. FASULA to the Funds.

3. The Trustees of the CENTRAL LABORERS PENSION, WELFARE and ANNUITY FUNDS have retained the law firm of Daley and George, Ltd., 20 S. Clark Street, Chicago, Illinois, to pursue the collection of the above-stated delinquent contributions and assessment penalties and have made payments to that law firm for legal fees incurred in the collection of the assessments.

Subscribed and sworn to before me  
this 4th Jan, 2008.

  
DAN KOEPPPEL

  
NOTARY PUBLIC



KOEPEL  
EXHIBIT 1

Mike Fasula Conc. Constr.  
7832 Burden Road  
Machnesney Park, IL 61115

Audit Liabilities Due: (10/01/02-12/31/06)

Pension	\$13,636.19	
NC Welfare	21,953.83	
NI Annuity	4,747.50	
Training	1,354.12	
NC LECET	249.54	
NC MRFFC	207.95	
NC Org	166.36	
CIAF	686.29	
NC Mkt P	62.44	
NC Vacation	2,183.53	
Working Dues	2,412.35	
Sub Total	\$47,660.10	
Liquidated Damages	4,766.01	
Audit Cost	873.75	
Total	\$53,299.86	\$53,299.86

Report Form Shortages:

Oct-96	Local 32	\$1.50	
Dec-96	Local 32	0.30	
Jun-06	Local NBG	32.00	
Total		\$33.80	\$33.80

Grand Total Due		<u>\$53,333.66</u>
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

CENTRAL LABORERS' PENSION FUND  
BOARD OF TRUSTEES, *et al.*

Plaintiffs,

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an Illinois corporation, and  
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Defendants.

07 C 6144

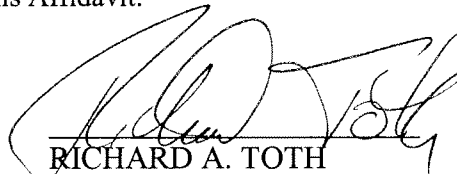
Honorable Suzanne B. Conlon

**AFFIDAVIT REGARDING FEES AND COSTS**

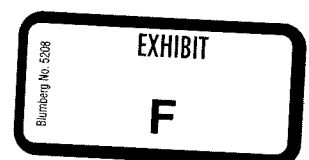
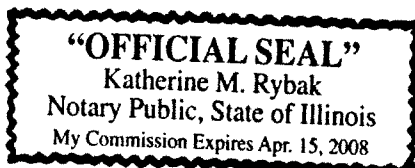
I, Richard A. Toth, affiant, duly sworn on oath, depose and say as follows:

1. I am an attorney, licensed to practice law in the State of Illinois.
2. I am an attorney at the law firm of Daley and George, Ltd., 20 S. Clark, Chicago, Illinois 60603, Plaintiff's attorney of record in this action. By virtue of my authority in that position I have direct personal knowledge of all facts stated in this affidavit and if called as a witness could give testimony with respect thereto.
3. The law firm of Daley and George, Ltd. was retained by Plaintiffs to pursue the collection of amounts due from Defendant(s) MIKE FASULA CONCRETE CONSTRUCTION, INC. and MICHAEL J. FASULA, and related relief.
4. As attorney for the Plaintiff, the law firm of Daley and George, Ltd. expended significant time and expenses in the ERISA action against Defendant(s) MIKE FASULA CONCRETE CONSTRUCTION, INC. and MICHAEL J. FASULA. An itemized statement of this time and expenses is attached as "Exhibit 1" and incorporated as part of this Affidavit.

Subscribed and sworn to  
before me this January 8, 2007.

  
RICHARD A. TOTH

  
NOTARY PUBLIC



**EXHIBIT 1**Central Laborers Pension Fund, *et al.* v. Mike Fasula Concrete Constr., Inc., *et al.***Case No. 07 C 6144****FEES**

09/17/07	Receipt and review of documents; investigation regarding corporate status; drafting complaint and related documents	1.00
10/31/07	Filing case in U.S. District Court; deliver to process server	0.50
10/31/07	Telephone conference with and correspondence to local sheriff re: service	0.50
11/19/07	Receipt and review of court minute order; docket court date; related correspondence	0.25
12/04/07	Receipt and review of returns of service; file; preparation for appearance in court	1.00
12/04/07	Appearance in court on status hearing	0.50
12/18/07	Drafting motion for default, supporting affidavit, affidavit of military service, notice of motion, draft order, etc.	1.00
01/08/08	Telephone conference with Fund Office; receipt and review of affidavit; prepare motion for filing; file motion	0.50
01/09/08	Appearance in court on status hearing	0.50
	Total hours:	5.75
	Total fees:	\$575.00

**COSTS**

10/23/07	U.S. District Court	\$350.00
11/19/08	Winnebago County Sheriff	\$47.00
	Total costs:	\$397.00
	<b>TOTAL FEES AND COSTS:</b>	<b>\$972.00</b>